



Signed: October 02, 2007

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 07-40472 EDJ
JAMES SCOTT RAINS Chapter 13
and JULIE RAINS,
Debtors./

DECISION

eCast Settlement Corporation, as agent for Bank of America/FIA Card Services ("eCast"), filed an objection to confirmation of the chapter 13 plan filed by James Scott and Julie Rains, the above debtors (the "debtors"). The court will sustain the objection, in part, and overrule the objection, in part.

On February 16, 2007, the debtors filed a chapter 13 petition herein.¹ On April 9, 2007, the debtors filed an amended chapter 13

¹This case is therefore governed by the Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer
(continued...)

DECISION

1 plan that proposed to pay the trustee \$300 per month for two months
2 and \$700 per month for 58 months. Under the plan, the debtors'
3 general unsecured creditors would receive an estimated 26% dividend.

4 eCast's objection alleges that the debtors' proposed chapter 13
5 plan does not dedicate all of their "projected disposable income" to
6 the plan in accordance with Bankruptcy Code § 1325(b)(1)(B).² This
7 is so, argues eCast, because certain expenses set forth in the
8 debtors' Schedule J are not "reasonably necessary to be expended. .
9 . for the maintenance or support of the debtor" within the meaning
10 of § 1325(b)(2).³ The expenses at issue are \$222 per month for a

11
12 ¹(...continued)
13 Protection Act of 2005 ("BAPCPA"), which applies to bankruptcy
14 cases filed on or after October 17, 2005. All section references
15 herein are to the Bankruptcy Code, 11 U.S.C. § 101 et. seq., as
16 amended by BAPCPA.

17 ²Section 1325(b)(1) provides:

18 (b)(1) If the trustee or the holder of an allowed unsecured claim
19 objects to the confirmation of the plan, then the court may not
20 approve the plan unless, as of the effective date of the plan -

21 (A) the value of the property to be distributed under the
22 plan on account of such claim is not less than the amount of such
23 claim; or

24 (B) the plan provides that all of the debtor's projected
25 disposable income to be received in the applicable commitment
26 period beginning on the date that the first payment is due under
the plan will be applied to make payments to unsecured creditors
under the plan.

³Section 1325(b)(2) provides, in relevant part:

(2) For purposes of this subsection, the term "disposable income"
means current monthly income received by the debtor (other than
(continued...))

1 boat loan and \$150 per month for a recreational motorcycle. eCast
2 also alleges that any plan, to be confirmed, must have a built-in
3 increase in the payments at month 21 of the plan when the debtors
4 expect to pay off their loan secured by a 2001 Chevrolet Tahoe.

5 The debtors do not argue that the expenses at issue are, in
6 fact, reasonably necessary for their maintenance and support.
7 Rather, they argue that their actual income and expenses, as
8 scheduled, are irrelevant to the calculation of their "projected
9 disposable income," because their current monthly income is above
10 the California median income, and because § 1325(b)(2) and (3)
11 mandate under such circumstances that the court determine their
12 income and expenses in accordance with the "means test" designated
13 in § 707(b)(2). The difference is that, according to some courts,
14 § 707(b)(2) may allow a debtor to include as expenses certain
15 amounts that, as a fixed allowance, are greater than the debtor's
16 actual expenses that are reasonably necessary for the debtor's
17 maintenance and support. See, e.g., In re Grunert, 353 B.R. 591,
18 594 (Bankr. E.D. Wis. 2006).

19 _____
20 ³(...continued)
21 child support payments, foster care payments, or disability
22 payments for a dependent child made in accordance with applicable
23 nonbankruptcy law to the extent reasonably necessary to be
expended for such child) less amounts reasonably necessary to be
expended -

24 (A)(i) for the maintenance or support of the debtor or a
25 dependent of the debtor, or for a domestic support
26 obligation, that first becomes payable after the date the
petition is filed;

1 The court rejects the debtors' interpretation. Many courts
2 have opined that even when the debtor's income is above the State
3 median, Subsections (2) and (3) of § 1325(b) were not intended to
4 allow debtors to include as expenses amounts they are not actually
5 expending (or expected to expend in the future) merely because such
6 non-existent expenses may arguably be allowed as deductions for
7 purposes of the means test. See, e.g., In re Slusher, 359 B.R. 290
8 (Bankr. Nev. 2007); In re Rezentes, 368 B.R. 55 (Bankr. Haw. 2007).⁴
9 The same rationale should apply to actual expenses, such as those at
10 issue here, that are not reasonably necessary for a debtor's
11 maintenance and support.

12 Such courts, with which this court concurs, have reasoned that
13 § 707(b)(2)(A)(ii)(I) (via § 1325(b)(3)) refers to the "applicable"
14 amounts to be deducted as expenses, and that expenses that are not
15 the debtor's actual expenses that are reasonable and necessary
16 (whether current or anticipated) are not "applicable" and thus are
17 not deductible for purposes of the calculation of the debtor's
18 "projected disposable income." See Slusher, 359 B.R. at 309;
19 Rezentes, 368 B.R. at 61.

20 Similarly, some courts have opined that "projected disposable
21 income" in § 1325(b)(1)(B), the amount the debtor must commit to the
22 plan, has a different meaning than "disposable income" in
23 § 1325(b)(2). Thus, according to these courts, the means test,
24

25 ⁴For cases holding to the contrary, see Rezentes, 368 B.R.
26 at 59-60 n. 3.

1 which applies, if at all, only to the calculation of "disposable
2 income" per § 1325(b)(2) and (3), is only a starting point for
3 calculating the debtor's "projected disposable income." See
4 Slusher, 359 B.R. at 296-98.

5 The court holds that, for purposes of this case, the
6 calculation of the debtors' projected disposable income is governed
7 by the information the debtors provided in their Schedules I
8 (Income) and J (Expenses), and that the debtors are not entitled to
9 a fixed allowance of any expense that is in excess of their actual
10 expenses that are reasonably necessary for their maintenance and
11 support, even if such a fixed allowance might be included in the
12 "means test" under § 707(b).

13 Apart from the above, the court believes it premature to
14 require the debtors' plan to provide for an increase in their plan
15 payment when the Chevrolet Tahoe is paid off. At present, what the
16 debtors' then income and expenses, actual and anticipated, might be
17 are not known. Bankruptcy Code § 1329(a)(1) provides:

18 At any time after confirmation of the plan, but before the
19 completion of payments under such plan, the plan may be
20 modified, upon request of the debtor, the trustee, or the
21 holder of an allowed secured claim, to - (1) increase or
22 reduce the amount of payments on claims of a particular
23 class provided for by the plan . . .

24 Therefore, if eCast wishes to request a modification of the debtors'
25 plan upon payoff of the Chevrolet Tahoe, based on the debtors'
26 income and expenses at that time, it may do so.

However, for the reasons stated above, the court will issue its
order sustaining Ecast's objection to confirmation of the debtors'
proposed amended chapter 13 plan.

END OF ORDER

COURT SERVICE LIST

All Recipients

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